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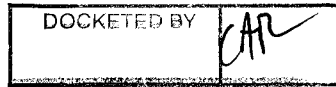
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JUN 27 2003

AZ CORP COMMISSION
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Attorneys for Voyager Water Company



BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER, Chairman
JIM IRVIN, Commissioner
WILLIAM A. MUNDELL, Commissioner
JEFF HATCH-MILLER, Commissioner
MIKE GLEASON, Commissioner

IN THE MATTER OF THE APPLICATION)
OF VOYAGER WATER COMPANY FOR)
AN EXTENSION OF THE SERVICE)
AREA UNDER ITS EXISTING)
CERTIFICATE OF CONVENIENCE AND)
NECESSITY TO PROVIDE WATER)
UTILITY SERVICES)

DOCKET NO. W-02104A-01-0742

**REQUEST TO MODIFY OR
AMEND DECISION NO. 64406**

Voyager Water Company ("Voyager") is the applicant in Decision No. 64406, dated January 31, 2002, as modified by Procedural Order, dated December 24, 2002 (collectively "Decision No. 64406"). Voyager herein moves the Arizona Corporation Commission ("ACC") to modify or amend the Order included in Decision No. 64406 to change the type and timing of compliance documentation to be obtained from the Arizona Department of Water Resources ("ADWR") and from the Arizona Department of Environmental Quality ("ADEQ").

PROCEDURAL BACKGROUND.

On January 31, 2002, the Arizona Corporation Commission (the "Commission") issued Decision No. 64406, which conditionally granted to Voyager Water Company

1 (“Voyager”) an extension of its service territory (the “Extension Area”) under its
2 Certificate of Convenience and Necessity (“Certificate”). Decision No. 64406 requires
3 Voyager to file by a specific date copies of either a Certificate of Assured Water Supply
4 (“CAWS”) or a Designation of Assured Water Supply issued by ADWR covering the
5 entire Extension Area, and the Approvals to Construct issued by ADEQ for the water
6 utility system improvements necessary to serve the developments in the Extension Area.
7 Voyager was required to file this required compliance documentation by January 31, 2003.

8 On October 11, 2002, ADWR issued to Voyager an Analysis of Assured Water
9 Supply (“Analysis”) (Exhibit “A”). An analysis of assured water supply is authorized by
10 ADWR, pursuant to A.A.C. R12-15-712, specifically for land that is not subdivided.
11 ADWR uses such analysis to determine “whether the development is likely to satisfy
12 requirements established by this Article after the development is platted and divided into
13 subdivided land.” A.A.C. R12-15-712(B). If a developer later subdivides land for which
14 an analysis of assured water supply has been issued into platted, subdivided lands, the
15 ADWR director will presumptively rely on that analysis as establishing that the
16 requirements for assured water supply remain satisfied. A.A.C. R12-15-712(F).

17 The Analysis issued to Voyager in October 2002 has a ten-year term from the
18 May 2, 2002 application date. The Analysis concludes the following:

- 19 • The Extension Area contains physical, continuous and legal availability of
20 water for 100 years at 360 acre-feet per year;
- 21 • The available water is of adequate water quality;
- 22 • The proposed water use is consistent with the management plan for the
23 Tucson Active Management Area; and
- 24 • Financial capability of the owner to build the necessary water distribution
25 system may be provided to ADWR when each subdivision obtains its CAWS.
- 26

1 The Analysis clearly directs and anticipates that developers shall apply to
2 ADWR for a CAWS for individual subdivision plats upon development. Individual
3 Notices of Intent to serve must be provided for each CAWS application and ADWR will
4 evaluate the non-hydrological requirements for compliance with its regulations at the time
5 of each CAWS application.

6 On December 24, 2002, the Commission issued a Procedural Order extending
7 the time to file the required compliance documentation from January 31, 2003 to
8 November 1, 2003.

9 **PROJECT STATUS.**

10 The Extension Area includes approximately 226 acres owned by WPI & Kolb-
11 I10 L.L.C. ("WPI") and approximately 64 acres owned by Voyager RV Resort, LLC
12 ("Voyager RV"). Both property owners were required to rezone the properties included in
13 the Extension Area once it was annexed by the City of Tucson (the "City"). The rezoning
14 for the WPI property is complete – the City Council approved the rezoning for the WPI
15 property on May 12, 2003. The rezoning for the Voyager RV property is in process and is
16 expected to be completed by November or December 2003. Until the City completes the
17 rezoning, the property owners cannot prepare tentative subdivision plats, which is a
18 prerequisite for applying for CAWS, and equally a precondition for preparing water
19 system designs in order to obtain ADEQ Approvals to Construct.

20 WPI and Voyager RV expect that upon the approvals of the rezoning for their
21 respective properties, they will begin the process of marketing their property for phased
22 development. As is the common practice in phased subdivision development, WPI and
23 Voyager RV intend to prepare block plats for City approval, dividing the property into
24 phases. Then, they expect to sell the block platted property to individual developers/home
25 builders who will in time prepare and submit subdivision plats for City approval.
26

1 Accordingly, Voyager will be unable to submit a subdivision plat to ADWR to
2 obtain a CAWS covering the entire Extension Area. Still, Voyager has already obtained
3 from ADWR the Analysis of Assured Water Supply that confirms that Voyager has
4 adequate water of acceptable water quality and a water use plan that satisfies the plan for
5 the Tucson Active Management Area. Future developers may rely on the Analysis at the
6 time they develop individual subdivisions to obtain a CAWS for the individual subdivision
7 as intended by ADWR.

8 Likewise, Voyager will be unable to obtain from ADEQ Approvals to Construct
9 the on-site water utility system improvements to serve each subdivision in the Extension
10 Area. Practically, WPI and Voyager RV instead intend to obtain from ADEQ an Approval
11 to Construct the off-site water facilities, including the main water utility transmission lines
12 connecting each of the blocks or phases that will eventually be subdivided by future
13 developers. The individual subdivision developers will then obtain from ADEQ additional
14 Approvals to Construct the remaining interior water lines serving the individual
15 subdivisions at the time of development.

16 **REQUEST FOR MODIFICATION.**

17 A phased master-planned development operates under a different timeline than a
18 single subdivision. Block platting occurs first, along with the construction of main water
19 transmission lines. As individual blocks or phases are sold to developers, the developers
20 prepare individual subdivision plats that include additional water line infrastructure to
21 service individual lots. It is not realistic to anticipate that the subdivision platting process
22 and planning for the entire water system will be completed early on in the development
23 process, thereby allowing ADWR to issue a CAWS or ADEQ to issue Approvals to
24 Construct that cover the entire extension development area. Moreover, ADWR's issuance
25 of an Analysis establishes that Voyager meets the assured water supply requirements while
26

1 assuring that future developers must apply to ADWR for a CAWS for individual
2 subdivision plats.

3 Voyager requests that the ACC take into account the extended timing and
4 practical reality of phased master-planned development and modify Decision No. 64406 as
5 follows:

- 6 1. Accept the October 11, 2002 Analysis of Assured Water Supply from
7 ADWR covering the entire requested extension area, per A.A.C. R12-15-
8 712, instead of requiring a CAWS from ADWR that covers the entire
9 requested extension area by November 1, 2003.
 - 10 2. Eliminate the requirement that developers submit to the ACC a CAWS for
11 individual subdivisions plats. ADWR's issuance of the Analysis adequately
12 establishes that Voyager meets the requirements of an assured water supply
13 and that ADWR will oversee future CAWS applications for individual
14 subdivisions.
 - 15 3. If the CAWS submittal requirement is not eliminated, instead require that
16 future subdivision developers obtain and submit their own CAWS issued by
17 ADWR for individual subdivision plats as development proceeds.
 - 18 4. Permit Voyager to file ADEQ Approvals to Construct as phased
19 development proceeds to be filed in connection with individual line
20 extension agreements which will include legal descriptions for the area
21 covered by each ADEQ Approval to Construct.
 - 22 5. Eliminate the time limits currently in effect in Decision No. 64406.
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1 **CONCLUSION.**

2 Voyager's Request to Modify or Amend Decision No. 64406 is reasonable and
3 necessary in light of the extended timing for and practical realities of phased subdivision
4 development. It meets the ACC's statutory and regulatory requirements for private water
5 companies and protects the public interest in regulated water service.

6 DATED this 26th day of June, 2003.

7 LEWIS AND ROCA LLP

8
9 By 

10 Michael F. McNulty

11 Mary Beth Savel

12 Attorneys for Voyager Water Company
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LEWIS
AND
ROCA
LLP
LAWYERS

1 ORIGINAL AND 13 COPIES filed
this ~~26th~~ day of June, 2003, with:

2 Arizona Corporation Commission
3 40 West Congress
Tucson, AZ 85701

4 COPY of the foregoing mailed
5 this ~~26th~~ day of June, 2003, to:

6 Teena Wolfe, Administrative Law Judge
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EXHIBIT "A"

ARIZONA DEPARTMENT OF WATER RESOURCES

Office of Assured and Adequate Water Supply

500 North Third Street, Phoenix, Arizona 85004

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JANE DEE HULL
Governor

JOSEPH C. SMITH
Director

ANALYSIS OF ASSURED WATER SUPPLY

October 11, 2002

File Number: 28-400732
Development: Voyager Expansion
Location: Township 15 South, Range 15 East, Section 32
Pima County, Arizona
Tucson AMA
Land Owner: WPI & Kolb-I10 L.L.C/Voyager RV Resort L.L.C.

The Arizona Department of Water Resources has evaluated the Analysis of Assured Water Supply application for Voyager Expansion pursuant to A.A.C. R12-15-712. The proposed development includes 1200 single-family residential lots, 40 multifamily units, and 7 non-residential acres. Non-residential use is a 9-hole chipping golf course. Voyager Water Company will serve the master plan. Conclusions of the review are indicated below based on the assured water supply criteria referenced in A.R.S. § 45-576 and A.A.C. R12-15-701 *et seq.*

- **Physical, Continuous, and Legal Availability of Water for 100 Years**
A new hydrology study was submitted with this application that demonstrated physical availability of 845 acre-feet per year within the existing service area. After accounting for current and committed demands of 35.7 acre feet per year, and accounting for this application's demand of 449.3 acre-feet per year, 360 acre-feet per year remains available for assured supply purposes.

The application for Analysis of Assured Water Supply included a Notice of Intent to Serve form signed by Ike Isaacson, Manager-Owner of Voyager Water Company. The Arizona Corporation Commission approved the extension of the Certificate of Convenience & Necessity for Voyager Water Company on January 31, 2002. Individual Notices of Intent to Serve will be required for each application for a Certificate of Assured Water Supply.

- **Adequate Water Quality**
The Department received a compliance status report from the Arizona Department of Environmental Quality dated May 16, 2002 that states that there are no major deficiencies by Voyager Water Company. This requirement of an Analysis of Assured Water Supply will be reevaluated for each application for a Certificate of Assured Water Supply.

- **Consistency with the Management Plan for the Tucson Active Management Area**
The residential water use was estimated using models for new development from the Tucson AMA Third Management Plan. Non-residential water use is from a 9-hole chipping golf course using 4.6 acre-feet per acre for a total of 32.2 acre-feet annually. Lost and unaccounted for water of 10% was added to the total demand.

Voyager Expansion will incorporate public irrigation systems designed to minimize loss, landscaping of model homes with low water use landscaping and low water use plants in public rights-of-way in conformance with the Third Management Plan. Proper meter maintenance and record keeping as well as oversight of water main construction will be practiced by the water company.

- **Consistency with the Management Goal of the Tucson Active Management Area**
The Assured and Adequate Water Supply Rules (A.A.C. § R12-15-705) allocate a volume of mined groundwater to each new subdivision plat in an AMA. Any water deliveries in excess of this mined groundwater allowance must be met through the direct or indirect use of renewable water supplies (surface water or effluent). Options for demonstrating consistency with the management goal include: 1) direct use of surface water or effluent; 2) recharge and recovery of surface water or effluent; or 3) membership in the Central Arizona Groundwater Replenishment District (CAGRDR). In addition, the groundwater allowance may be increased by extinguishing grandfathered groundwater rights. Prior to preparing an application for a Certificate of Assured Water Supply for an individual subdivision plat, the Tucson AMA Office or the Office of Assured Water Supply may be contacted for further guidance.

The application indicates that the proposed development will be a member land of the Central Arizona Groundwater Replenishment District (CAGRDR) upon issuance of a Certificate of Assured Water Supply. The membership documents must be executed and recorded before a Certificate of Assured Water Supply will be issued. The 100-year volume on the application of 39,189 AF consists of 100% groundwater.

- **Financial Capability of the Owner to Construct the Necessary Distribution System**
Pursuant to A.A.C. R12-15-707, financial capability will be evaluated by the local platting authority as a part of the process for obtaining a Certificate of Assured Water Supply for each subdivision. The application for a Certificate of Assured Water Supply includes a Verification of Construction Assurance for a Proposed Subdivision form. This form must be signed by the appropriate platting entity to provide evidence of financial capability. This requirement of an assured water supply will be evaluated upon application for a Certificate of Assured Water Supply.

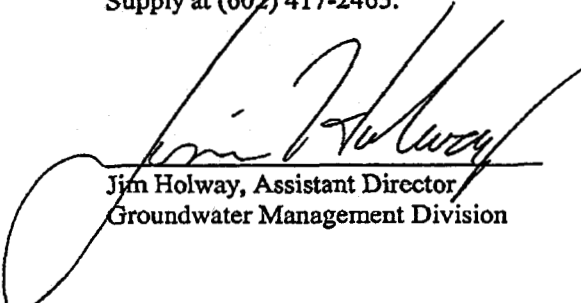
The term of this Analysis of Assured Water Supply is ten years from the date of application (May 2, 2002) and may be renewed upon request, subject to approval by the Department. Throughout the term of this determination, the projected demand of this development will be considered when reviewing other requests

Analysis of Assured Water Supply
Voyager Expansion
October 11, 2002
Page 3

for assured water supply in the area.

Prior to obtaining plat approval by the local platting authority and approval of the public report by the Department of Real Estate, a Certificate of Assured Water Supply must be obtained for each subdivision plat. The findings of this Analysis of Assured Water Supply may be used to demonstrate that certain requirements for a Certificate have been met. This determination may be invalidated if the development plan or other conditions change prior to filing for a Certificate of Assured Water Supply.

Questions may be directed to the Tucson AMA Office at (520) 770-3800, or the Office of Assured Water Supply at (602) 417-2465.



Jim Holway, Assistant Director
Groundwater Management Division

cc: Doug Dunham, Office of Assured Water Supply
Karen Modesto, Hydrology Division
Cliff Neal, CAGRD